

No. 19-10941-CM
No. 20-03048-UA

MEMO ENDORSED

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: PURDUE PHARMA L.P.,

Debtors.

BRYANT C. DUNAWAY, ET AL.,

Appellants,

v.

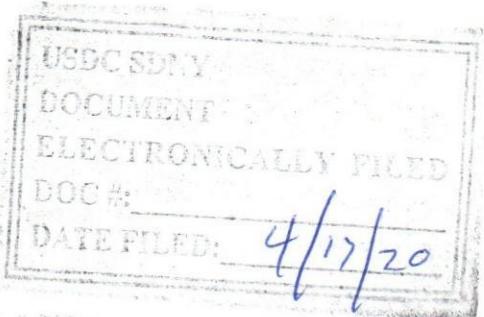
PURDUE PHARMA L.P., ET AL.,

Appellees.

4/17/2020 jd
Mr. [Signature] M [Signature]
Allen M. Williamson

On Appeal from the United States Bankruptcy Court
For the Southern District of New York,
The Honorable Robert D. Drain, Presiding
Case No. 1:19-23649-RDD
Adversary Proceeding No. 19-08289-RDD

APPELLANTS' MOTION TO CONSOLIDATE AND ESTABLISH BRIEFING
SCHEDULE FOR SUCCESSIVE RELATED APPEALS



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April 16, 2020

The appellants here, public officials in the State of Tennessee, by their counsel, Godfrey & Kahn, S.C., move the Court pursuant to Fed. R. Bankr. P. 7042 and 8013 for an order consolidating and establishing a briefing schedule for two successive related bankruptcy appeals. In support of the motion, the appellants state that:

JURISDICTION

1. This Court has jurisdiction over these matters pursuant to 28 U.S.C. § 158(a).
2. Venue in this Court is proper pursuant to 28 U.S.C. § 1409(a).
3. The basis for the relief requested herein is Rule 42(a) of the Federal Rules of Civil Procedure and Rule 7042 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

1. Appellants commenced the above-captioned appeal (the First Appeal) on November 20, 2019 from the preliminary injunction order issued by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) enjoining litigation against non-Debtors nationwide through April 8, 2020 [D.I. 1].¹
2. The First Appeal is docketed in this Court under Case No. 19-10941-CM.
3. Consistent with this Court’s scheduling order in the First Appeal [D.I. 12], the appellants filed the *Appellants’ Principal Brief* on January 22, 2020 [D.I. 13], and the appellees filed the *Brief of the Appellees* on March 7, 2020 [D.I. 14].
4. On March 30, 2020, over several objections, the Bankruptcy Court entered the *Eighth Amended Order Pursuant to 11 U.S.C. § 105(a) Granting Motion for a Preliminary Injunction* [Adv. Dkt. No. 168], extending the term of the preliminary injunction through October 5, 2020.

¹ References to items on the docket in this appeal are presented as “D.I. [xx].”

5. On April 10, 2020, appellants timely appealed the March 30, 2020 Bankruptcy Court order by filing a *Notice of Appeal and Statement of Election* [Adv. Dkt. No. 172], accompanied by a Civil Cover Sheet [Adv. Dkt. No. 172-1] and Related Case Statement [Adv. Dkt. No. 172-2] (the “Second Appeal”).

6. The Second Appeal has been docketed in this Court under Case No. 7:20-cv-03048.

SUPPORTING AUTHORITY

7. Federal Rule of Civil Procedure 42(a) provides, in relevant part:

If actions before the Court involve a common question of law or fact the court may:

1. Join for hearing or trial any and all matters at issue in the actions;
2. Consolidate the actions; or
3. Issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a).

8. In this case, each appeal arises from the same adversary proceeding resulting in the Bankruptcy Court’s entry and renewal of a preliminary injunction order shielding non-debtor parties from opioid litigation in other jurisdictions.

9. The issues the Second Appeal raises overlap substantially with those addressed in First Appeal, though the Second Appeal will address a new legal argument not implicated in the First Appeal.

10. In the interest of administrative efficiency and judicial economy, appellants move to consolidate the two appeals for the completion of briefing and decision.

11. Under this Court’s March 30, 2020 endorsed order, appellants are entitled to file a reply brief on or before April 16, 2020. To minimize duplicative briefing, the appellants hereby

provisionally waive the opportunity to file a reply, instead proposing the following briefing schedule for the consolidated appeals:

- a. May 22, 2020—appellants' initial brief;
- b. June 22, 2020—appellees' responsive brief;
- c. July 6, 2020—appellants' reply brief.

12. This proposed schedule provides ample time for the Court's consideration of all issues in a single appeal, and—should the Court wish it—will permit timely and comprehensive oral argument.

13. In the event the Court denies this consolidation motion, appellants request the opportunity to file a reply brief in the First Appeal within five days of any order denying the requested relief.

RELIEF REQUESTED

For the reasons stated above, the appellants request the entry of an order consolidating the related appeals and establishing a briefing schedule substantially in the form proposed above, or such other relief as the Court deems appropriate.

Dated: April 16, 2020.
Madison, Wisconsin

Respectfully submitted,

/s/ Katherine Stadler
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 16, 2020, I caused an electronic copy of the Appellants' Motion to Consolidate and Establish Briefing Schedule for Successive Related Appeals to be electronically filed with the United States District Court for the Southern District of New York using the CM/ECF system, which, pursuant to Fed. R. Bankr. P. 8011(c)(2) and (3), will automatically send notification of such filing to counsel of record.

Further, in compliance with the Court's Standing Order dated November 25, 2009, I have caused a courtesy copy, marked as such, by Federal Express overnight mail, prepaid and addressed to:

Chief Judge Colleen McMahon
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
Courtroom 24A
500 Pearl Street
New York, NY 10007-1312

Dated: April 16, 2020.

/s/ Katherine Stadler
Katherine Stadler

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